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C O N F I D E N T I A L SECTION 01 OF 04 ISTANBUL 001279

SIPDIS

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TAGS: PHUM PGOV TU

SUBJECT: GREEK, ARMENIAN PROPERTY WOES PROMPT COMPARISON
WITH "GOOD OLD OTTOMAN DAYS"

REF: A. 02 ANKARA 6116

B. 02 ANKARA 7290
C. 02 ANKARA 8586
D. 03 ISTANBUL 202
E. 03 ANKARA 2909
F. ISTANBUL 843
G. 02 ISTANBUL 1778

Classified By: Pol/Econ Chief Stuart Smith for Reasons 1.4 (b&d)

1. (sbu) Summary: Turkey's Istanbul-based minority religious communities report that while recent legislation has enabled them to "legalize" ownership of numerous properties already under their control, the new law is inadequate in that it does not permit the community foundations (mostly Greek Orthodox and Armenian) to reclaim properties that were seized by the state over the last 30 years. In addition, community representatives note that they continue to face outright discrimination, in violation of the Lausanne Treaty, as their religious foundations must meet requirements not imposed on other foundations in order to acquire new properties. While these institutions operated more freely during the Ottoman period, our contacts note that the problems they face today stem directly from a xenophobic, paranoid, "deep-state" mentality that continues to pervade the bureaucracy, courts, and military. Interestingly, a decision taken by the Jewish community in the 1930s appears to have left it in a much better position than its counterparts. End Summary.

A Tough Place to Be a Religious Minority

2. (u) Legal problems aside, the most grave injustices committed against the minority communities are unlikely to ever be redressed. The post-WWI population exchange between Greece and Turkey, the WWII wealth tax that forced many Greeks, Armenians, and Jews to sell their businesses and properties (and sent those who could not pay to labor camps), the 1955 anti-Greek riots that destroyed thousands of Greek businesses, and subsequent Greek-Turkish tensions in the 1960s and 70s all created conditions in which members of the minority communities were forced to sell their properties at firesale prices or abandon them altogether. This cable examines only those properties to which the minority community foundations have legal claims through acquisition (usually by donation) or prior ownership.

Ottoman Era: Benign Neglect

3. (u) The complex challenges faced by the communities stem, in part, from the historical context of the transition from the Ottoman Empire to the Turkish Republic. During the Ottoman period, the minority religious communities had no "foundations" and ran themselves under their own laws concerning church or synagogue matters. Their churches, synagogues, schools, monasteries, seminaries, and other properties either pre-dated the Ottoman Empire or were granted and authorized by the Sultan himself. It wasn't until 1935 and 1936 that Turkey imposed rules and regulations on these institutions by defining them as "foundations" (although this confused them with the many thousand Muslim "vakifs" or foundations that operated under different rules), by placing them under the supervision of the General Directorate for Foundations (GDF), and by requiring them to submit declarations listing their extant properties.

Modern Turkey: Regulate and Control

4. (u) In 1974 a Turkish high court decided that the minority religious foundations had no right to acquire property beyond those listed on their 1936 declarations, thus initiating a process that has continued almost to this day by which the state began to seize communal properties under various pretexts. Such properties included those that had fallen into disuse, disrepair, or, according to the authorities, had insufficient "documentation" to establish firm legal ownership. When the local population in specific areas fell below the statutory requirements, two Greek Orthodox foundations were taken into custody by the state in their entirety. Almost all of the properties confiscated since 1974 were rent-generating apartments and stores (not churches, synagogues, monasteries or other core communal institutions) that previously belonged to members of the community and had been bequeathed to the community foundations.

15. (c) As part of the 2002 EU Copenhagen criteria reforms, the Turkish parliament passed a law which in principle allows the minority religious communities to acquire, sell, and apply to register properties (ref A). According to this initial reform, subsequent changes, and implementing regulations (refs B-E), minority foundations may indeed in principle acquire (either by purchase or donation) and sell properties, but only with the prior approval of the GDF. They may also apply to register properties under their control to which they do not already have clear legal ownership. The laws do not permit them, however, to reclaim any of the properties acquired since 1936 that were expropriated following the 1974 court decision. The Greek Orthodox and Armenian communities also both complain that these reforms do not address their other core concerns on obtaining recognition of legal personality for their Patriarchates, educating their clergy, and other issues. Huseyin Hatemi, an Istanbul University law professor and adviser to both communities, told poloff that the law does not turn the clock back to 1974 (when the communities freely acquired properties without special permission), much less to 1935 (when they were almost totally unregulated).

16. (c) Ata Sakmar, a Galatasaray University law professor and another adviser, agreed with Hatemi and noted to poloff that the root of the problem is a deeply frozen, xenophobic, paranoid, "deep state" mentality that stems from the events of World War I, the Treaty of Sevres, and what the Greeks refer to as the "Asia Minor Catastrophe." Turkey only grudgingly accepted the 1923 Lausanne Treaty (guaranteeing freedoms and protections for non-Muslims) and ever since has tried, without any legal basis, to link its treatment of minorities with Greece's treatment of the Muslim population in Thrace. Sakmar said this mentality is pervasive in the bureaucracy and even the courts. In an ongoing expropriation case of the Greek Orthodox orphanage on Buyukada, for example, a civil court judge discarded the entire civil code and applied an irrelevant administrative code to reach a decision against the Patriarchate, something Sakmar likened to having a U.S. small claims court decide to impose an involuntary divorce on a plaintiff. Sakmar said the same attitude was exhibited by the new interministerial commission tasked to resolve minority issues in their January meeting with the Ecumenical Patriarch (ref f).

17. (c) Not all of the minorities are complaining, however. Silvio Ovadya, the newly appointed President of the Jewish Community, told poloff that they are pleased with the new reforms. To date, they have won approval to purchase some land, to sell some properties, and to legalize their ownership of properties, including the Italian synagogue in Istanbul. Founded for and used by non-Turks, the synagogue was deliberately excluded on the community's 1936 declaration. With the disappearance of that element of the community, however, Istanbul's remaining Jews have maintained the property. Establishing ownership in a similar pending petition for properties in Izmir is more problematic and Ovadya did not seem to expect a positive response. Unlike the Greek Orthodox and Armenians, however, the Jews have few property grievances. When they were asked to list their properties in 1935-6, in what now seems to have been a prescient decision, they simply formed associations, transferred most rent-generating properties to the associations, and left them off the list.

18. (c) Adnan Ertem, the Acting Director for the GDF in Istanbul and the senior official responsible for implementing the new laws, argued to poloff, however, that enormous strides had been made over the last two years. He claimed that his office has rapidly and liberally implemented the new laws. Although the regulations allow for a more narrow reading, Erdem asserts that his office has decided that even rent-generating properties will be deemed to meet the "cultural and religious" needs of the communities (presumably the rents will ultimately go to that purpose). He asserts further that no application to acquire new property has yet been refused (Note: This was an early concern for the communities, ref g). With regard to the almost 2000 applications to legalize existing properties, Erdem claimed to have kept rigidly to the 2-month limit for considering such cases. Roughly one-third have been approved, one-third sent back for more documentation (of those that have been resubmitted, Ertem claims that 90 percent have been approved), and one-third refused (on the grounds that they legally "belong" to third parties -- i.e., they were expropriated or are simply listed in the names of other individuals -- for the most part these were not under the control of the foundations and therefore ineligible for legalization under the new laws).

19. (c) Asked about other problems encountered by the communities -- but not addressed in the new laws -- Ertem evinced an accommodating attitude. He agreed, for example,

that there is no need to restrict participation in elections for foundation boards to small geographic districts. Allowing anybody in Istanbul to participate, for example, would allow foundations in neighborhoods in which the community no longer resides to continue to operate (Note: Ertem suggested that we might want to raise this in Ankara where the foundation law is being rewritten). Asked about the recent appropriation of the Greek Orthodox community's Buyukada orphanage, Ertem averred that solutions could have been found to keep the orphanage in the community's hands, but argued that the Patriarchate is more interested in preserving the original deed which is in its name (Note: Because Turkey does not recognize the Patriarch as a legal entity, the GDF challenged the deed and won a court ruling to expropriate the property). Finally, Ertem disputed allegations that minority community foundations face discrimination, arguing that other foundations also require GDF approval to acquire and sell properties (in fact they require additional court approval to sell). Ertem agreed that having two separate sets of laws is inappropriate and said that he hopes the new draft foundation law will apply equally to all foundations.

10. (c) In an off-the-record postscript, Ertem told poloff that the Jewish and Armenian communities have good working relationships with his office. The Greek Orthodox, however, never raise their problems with him, instead taking them directly to the Prime Minister, his cabinet, other countries, and even the European Court of Human Rights (Note: The Turkish press reported widely on August 10 that the ECHR had agreed to consider a petition by a Greek Orthodox foundation in Istanbul). Ertem speculated that this may be because the Greek Orthodox community is primarily motivated by political, not administrative, concerns. Specifically, the Patriarchate wants legal status for itself, something with which Ertem claimed to have no personal problem, but which can only come from being recognized by the Turkish government.

11. (u) Neither the Greek Orthodox nor the Armenians ever saw the 2002 reforms as a solution to their problems and both continue to lobby government officials to address their concerns. Armenian Patriarch Mesrob II met with FM Gul on July 16 and presented him with a letter detailing his community's grievances. Ecumenical Patriarch Bartholomew, meanwhile, gave interviews this month to the BBC, Associated Press, and Reuters, in which he explained his problems. (Note: Bartholomew's interview with Reuters generated critical local press coverage when he was misquoted as calling on EU countries to "pressure" Turkey on these issues).

Comment: The Real Problem

12. (c) Even the fiercest critics of Turkey's inability to resolve the problems of its minority religious communities admit that the AKP government seems determined to tackle the issue (an opinion expressed by both Hatemi and Sakmar, although Hatemi wondered whether FM Gul's appointment of notorious hardline nationalist Ambassador Bolukbasi-- who narrowly escaped assassination by the Armenian terrorist group ASALA years ago and whose nickname is Ambassador No -- to the interministerial commission was intended to sabotage the effort). If Ertem is correct, the new laws on property are being implemented in a timely fashion. The reforms adopted so far, however, have two fundamental flaws. First, the laws do nothing to address the principal Greek Orthodox and Armenian grievances on property issues -- specifically, to allow them to reclaim properties that were seized since 1974. Second, the narrow reforms fail to address the wider political concerns of the communities.

13. (c) The Armenian Patriarch, concerned about the long-term viability of the 60,000-plus member community, has focused primarily on his ability to find Armenian-capable teachers for their schools, train priests and reopen churches, and preserve the historical legacy of the community. The Ecumenical Patriarch, with fewer than 3,000 Greek Orthodox left in Turkey, is more concerned with obtaining recognition of his Ecumenical status and reopening the Halki seminary to train new generations of clergy loyal to the Patriarchate. Both also seek a relaxation of strict rules on electing foundation board members and recognition of their "legal personality" as a means to securing their leadership positions in their respective communities.

14. (c) Ertem's accommodating attitude notwithstanding, anecdotal evidence provided by our interlocutors and our personal observations of public reactions to minority issues support charges that the root of the problem lies in a xenophobic paranoia that pervades the bureaucracy. As such, the problems that continue to afflict the communities' are unlikely to be resolved with piecemeal reforms and countless ongoing appeals to the GDF and the courts. Instead, it seems to us that a solution will only be possible when the Turkish government faces the fundamental issues head-on, takes a firm decision that these communities are an asset and not a threat

to Turkey, and resolves to do whatever it takes to help them survive.

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